UN

UNITED NATIONS

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Economic and Social Council

Distr.
GENERAL

E/CN.4/1998/NGO/5
9 February 1998

Original: ENGLISH

COMMISSION ON HUMAN RIGHTS
Fifty-fourth session
Item 8 of the provisional agenda

QUESTION OF THE HUMAN RIGHTS OF ALL PERSONS SUBJECTED TO ANY FORM OF DETENTION OR IMPRISONMENT

Written statement submitted by the International Federation of Human Rights Leagues, a non-governmental organization in special consultative status

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1296 (XLIV).

[20 January 1998]

GE.98-10454 (E)

1. The International Federation of Human Rights Leagues (FIDH) and its Northern Ireland affiliate, the Committee on the Administration of Justice (CAJ), believe that issues of justice, rights and fairness are at the heart of the conflict in Northern Ireland. We believe that the establishment of the rule of law must be at the heart of efforts to resolve the conflict. An independent and professional legal profession, free from intimidation, is crucial to the successful operation of this principle.

2. Accordingly we urge a prompt response to the recommendations of the Special Rapporteur on the independence of judges and lawyers following his visit to Northern Ireland and England in October 1997. Additionally, we urge action to remedy a number of outstanding human rights concerns, many of which have been the subject of previous comment at the Human Rights Committee (1991 and 1995), the Committee against Torture (1991 and 1995), the Commission on Human Rights (1993, 1994 and 1996), the Sub-Commission on Prevention of Discrimination and Protection of Minorities (1992, 1993, 1994 and 1996), and the European Committee for the Prevention of Torture (1994), and have been the cause of several adverse findings against the United Kingdom in the European Court of Human Rights (e.g. McCann, Murray, Brogan).

3. Regrettably, the United Kingdom Government has failed to respond adequately to these concerns and indeed, on several occasions, the previous Government showed flagrant disregard for the findings of international human rights bodies.

Intimidation of defence lawyers

4. The FIDH and CAJ have previously expressed concern at allegations that some police officers threaten and abuse lawyers in a manner entirely inconsistent with the Basic Principles on the Role of Lawyers. We have also expressed concern that the killing of prominent defence lawyer Patrick Finucane, amidst concerns of official collusion, remains unresolved.

5. The serious nature of these concerns persuaded the Special Rapporteur on the independence of judges and lawyers to conduct an on site investigation in Northern Ireland in October 1997. The terms of reference for the visit were to investigate:

(a) The abuse of defence lawyers;

(b) Questions in relation to legal access, including deferrals and the refusal to allow solicitors to be present during police interviews;

(c) The absence of video and audio recording in the holding centres in Northern Ireland;

(d) The murder of Patrick Finucane;

(e) Provisions in the emergency laws, such as the absence of a jury, lower threshold for admissibility of confession evidence, and the abrogation of the right to silence, that impinge on the ability of the judiciary to function impartially and independently.

6. Evidence gathered by FIDH and CAJ indicates that the intimidation of defence lawyers normally consists of threats to them via their clients. These threats are made by some interviewing detectives during detention under the emergency regime. These allegations have been made consistently since the 1980s yet no officer has been disciplined.

7. Of particular concern in the past year are reports of physical assault on two female lawyers, one of whom alleges that the police also used sectarian language against her. She also alleges that the officers, who were policing a public order event and wearing balaclavas, refused to provide her with identification numbers.

8. The murder of prominent defence lawyer Patrick Finucane remains unresolved. He was murdered at his home in 1989 by loyalist paramilitaries but there are credible reports that agents of the State colluded in his killing. Indeed, it emerged that an agent for British military intelligence was involved in the planning of the killing and passed on details to his superiors, but Mr. Finucane was not warned. Shortly before Mr. Finucane's death, a government minister accused a number of unnamed lawyers in Northern Ireland of being unduly sympathetic to the IRA. At the conclusion of Mr. Cumaraswamy's visit to Northern Ireland, in a preliminary observation on his findings, he said there appeared to him to be an unallayed suspicion of security force involvement in the Finucane murder. He also said that there were compelling reasons for an independent judicial inquiry into the murder of Mr. Finucane. FIDH and CAJ also believe that such an inquiry should be established. A similar call was made by Mrs. Palley at the Sub-Commission in 1992.

9. We also remain concerned about the emergency legal regime in Northern Ireland, with its significant restrictions on access to legal advice and the effective removal of the right to remain silent. In 1996 the European Court of Human Rights found that aspects of the detention regime violated the Convention. The United Kingdom Government has still not complied with the judgement and in fact has renewed the offending legislation. Furthermore the United Kingdom continues to derogate from the International Covenant on Civil and Political Rights and from the European Convention in respect of the powers which allow for seven-day detention without judicial review. Indeed when the United Kingdom Government recently announced its intention to incorporate the European Convention on Human Rights, it also confirmed its intention to incorporate the derogation from the Convention into domestic law despite the massive reduction in the level of the security threat and ceasefires by the main paramilitary groups.

10. Following widespread concern among non-governmental organizations and the findings of bodies like the United Nations Committee against Torture the Government eventually agreed to introduce silent video recordings of interviews. This announcement, while welcome, was made two years ago and, at the time of writing, the recordings have still not been introduced. The Government also recently announced its intention to introduce audio recordings in the holding centres. FIDH and CAJ welcome this but are concerned that the announcement was made along with the introduction of new emergency legislation which will not expire until 2000, six years after the beginning of the peace process.

11. Despite these announcements, solicitors for those detained will still not be able to attend interviews. Also, the power to defer access to legal advice for up to 48 hours will remain. While there was a welcome reduction in the number of such deferrals in recent years, FIDH and CAJ are concerned that, based on the statistics for the first three quarters of 1997 (the figures for the last quarter are not yet available), there has been a more than 100 per cent increase in deferrals.

12. FIDH and CAJ are also concerned at the implications of the Police Act 1997 which allows the police to examine documents and place electronic surveillance devices in private and business premises. Consequently, the police can now lawfully, with prior authorization from Government-appointed commissioners, break into a solicitor's office and examine his/her files.

13. FIDH and CAJ are concerned by evidence that police officers failed to intervene in an attack in Portadown which left a young Catholic man, Robert Hamill, dead. Eye-witnesses suggest that officers were present at the scene but did not intervene. In the aftermath of the attack, police issued conflicting press statements about the circumstances surrounding the death. Eventually, six men were charged with the killing but charges against five of the six have now been withdrawn. No officers have been suspended.

14. We are also concerned at the continuing allegations of harassment by the security forces, illustrated by the case of Colin Duffy. Since 1989 Mr. Duffy has been prosecuted on six occasions. On each occasion, the charges have either been dropped, he has been acquitted at trial or at appeal. He has spent approximately five years in custody awaiting various trials. In June he was charged with murder and spent approximately four months in custody, based on the evidence of one eye-witness in police custody, in spite of 12 alibi witnesses coming forward to give statements to the police on behalf of Duffy. He has since been rearrested and charged with grievous bodily harm. Mr. Duffy complains that on the occasions when he is at liberty, he is constantly stopped and searched by the security forces, reportedly on almost every occasion he leaves his house.

Conclusion

15. FIDH and CAJ believe that the cornerstone of a peaceful and democratic society must be respect for the rule of law. It is clear that this prerequisite is absent in Northern Ireland. We believe it is essential, if lasting peace is to be established in Northern Ireland, that the Government act immediately on the recommendations of the Special Rapporteur, Mr. Cumaraswamy. This would entail the immediate establishment of an independent judicial inquiry into the death of Patrick Finucane, and meaningful action to prevent harassment and threats against defence lawyers. Additionally, the United Kingdom Government should finally act on the recommendations of the Human Rights Committee (1995) and the Committee against Torture (1995) and dismantle the apparatus of emergency laws currently operating in Northern Ireland. We respectfully request the Commission to urge the Government of the United Kingdom to comply immediately with its international human rights obligations in this regard.